

**REMARKS**

This is a full and timely response to the outstanding final Office Action mailed June 14, 2006. Through this response, Applicants have amended claims 31-40 to remove issues for appeal or otherwise place the case in better condition for allowance. Claims 1-48 remain pending. Reconsideration and allowance of the application and pending claims are respectfully requested.

**I. Claim Rejections - 35 U.S.C. § 101**

The Office Action asserts the following with regard to claims 31-40:

Regarding to the rejection of claims 1-48 under 35 USC 101, Examiner withdraws the 101 rejection for claims 1-30 and 41-48, but maintains the under 35 USC 101 rejection of claims 31-40, because these claims are directed to a non-statutory subject matter, specifically, the claims are not directed towards the final result that is "useful, tangible and concrete...and because the claims are directed to a non-statutory subject matter, specifically, directed towards "computer readable medium," not a computer-readable storage medium. Therefore, these claims are non-statutory.

Applicants respectfully disagree. However, in the interest of removing issues for appeal or otherwise placing the case in better condition for allowance, Applicants have amended claims 31-40 to replace "computer readable medium" with "computer-readable storage medium."

With regard to the assertion that the claims are "not directed towards a final result that is 'useful, tangible and concrete,'" Applicants respectfully disagree, and note that the final result of independent claim 31 (incorporated into dependent claims 32-40) is causing a processor to convey a *file lock indicator to a second predetermined data-store when the primary server is unavailable*. The conveyance of the file lock indicator is "tangible," using Webster's on-line dictionary for the term "tangible," since the file lock indicator comprises information that is capable

of being perceived and identified (for example, by another server, such as an adoptive server, that acknowledges the file lock indicator and hence grants access to the corresponding file to the client that previously was granted access by the now unavailable primary server). Since the file lock indicator is tangible, it is consequently "concrete." The conveyance of the file lock indicator is also "useful" since it enables a client to obtain access to a file when access to that file is controlled by another server, such as the adoptive server. Without the conveyance, access may be denied, since the adoptive server may not recognize the file lock previously granted by the primary server. Accordingly, Applicants respectfully submit that the final result of claims 31-40 is useful, tangible and concrete, and hence respectfully request that the rejection be withdrawn.

## II. Claim Rejections - 35 U.S.C. § 102(e)

### A. Statement of the Rejection

Claims 1-48 have been rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by *Miloushev, et al.* ("Miloushev," U.S. Pub. No. 2004/0133652). Applicant respectfully traverses this rejection.

### B. Discussion of the Rejection

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(e).

In the present case, not every feature of the claimed invention is represented in the *Miloushev* reference. Applicants discuss the *Miloushev* reference and Applicants' claims in the following.

#### Independent Claim 1

Claim 1 recites (with emphasis added):

1. A method for migrating file locks from one server to another comprising:  
receiving a *file lock indicator* from a primary server;  
recording the *file lock indicator*; and  
conveying the *file lock indicator* to an adoptive server when the primary server is unavailable.

Applicants respectfully submits that *Miloushev* fails to disclose at least the above-emphasized claim features. Applicants respectfully note that a *file lock indicator* is distinct from a file lock, and in fact comprises information pertaining to the file lock. For instance, paragraph [0018] of Applicants' specification notes that, at least in one embodiment, "the file lock indicator comprises information pertaining to the file lock, the client to whom the file lock was granted and associated file access privileges." The Office Action asserts on page 3 that a "file lock" is taught in paragraphs 0079, 0368, 0370, and 0388, and that an "adoptive server" equates to the second file server in *Miloushev*, as allegedly taught in paragraphs 0080, 0251, 0368, 0374, and 0388. On page 4 of the Office Action, the following is asserted:

Regarding claim 1, *Miloushev* teaches migrating tile[sic] locks from one server to another comprising: receiving a file lock indicator from a primary server[0135]; recording the file lock indicator[0442]; and conveying the file lock indicator[0442] to an adoptive server when the primary server is unavailable[0273-0274].

Applicants respectfully disagree. Paragraph 0135 of *Miloushev* is reproduced below:

[0135] The control plane layer 614 is responsible for maintaining the operation of the data plane 615. It sets up the configuration of the data plane, controls the life cycle of the file switch, such as start, stop, and restart, and implements various management protocols. In addition, it includes additional services that provide

features like clustering of file switches, load balancing, failover, backup, file system check and repair, and automated management. These functions don't participate directly in serving client-originated file requests, but are essential for the existence and continued operation of the file switch. These functions may also include value-adding services, such as data migration and accounting.

Applicants cannot ascertain where in this cited section a *file lock indicator* is disclosed.

Applicants note that the Office Action refers to paragraph 0442 for the feature of recording of a *file lock indicator*. Paragraph 0442 of *Miloushev* is reproduced below:

[0442] Note that when enumerating directories, the total number of entries that are in the enumeration set may exceed the number of entries that can be returned back to the client due to limitations of the client's response receive buffer. If this situation occurs, the file switch sends an enumeration response containing a subset of the entries with an indicator that indicates there are more entries in the enumeration. This enables the client to send another enumeration request to retrieve the remaining entries.

Although this section refers to an indicator, there is nothing to suggest that such an indicator is a *file lock indicator*. For at least these reasons, Applicants respectfully submit that *Miloushev* fails to disclose at least the above-emphasized features, and respectfully request that the rejection be withdrawn.

Because independent claim 1 is allowable over *Miloushev*, dependent claims 2-10 are allowable as a matter of law for at least the reason that the dependent claims 2-10 contain all elements of their respective base claim. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

Additionally, Applicants respectfully disagree with the assertion on page 3 that an "adoptive server" equates to the second file server in *Miloushev*, and respectfully submit that equating the two is inconsistent with Applicants' use of the phrase "adoptive server." and would not be recognized as an equivalent by one having ordinary skill in the art. That is, there is nothing in *Miloushev* that suggests that the second server comprises functionality that has been

migrated from another server. In paragraph 0080 of *Miloushev*, for instance, it appears that spillover involves data files, not the migration of functionality.

Further, Applicants respectfully note that at least one of the sections cited by the Office Action used to allegedly showing show a file lock is paragraph 0079 discloses an "oplock." That section, paragraph 0080, is reproduced below (with emphasis added):

[0079] Oplock. An oplock, also called an "opportunistic lock" is a mechanism for allowing the data in a file to be cached, typically by the user (or client) of the file. Unlike a regular lock on a file, an oplock on behalf of a first client is automatically broken whenever a second client attempts to access the file in a manner inconsistent with the oplock obtained by the first client. Thus, an oplock does not actually provide exclusive access to a file; rather it provides a mechanism for detecting when access to a file changes from exclusive to shared, and for writing cached data back to the file (if necessary) before enabling shared access to the file.

Applicants respectfully submit that the non-exclusive access features of an op-lock is in contrast to the well-recognized meaning of file locks, the latter which indeed do provide for exclusive access.

#### Independent Claim 11

Claim 11 recites (with emphasis added):

11. (Original) A file lock migration unit comprising:  
data storage unit; and  
file lock monitor comprising:  
file lock receiver capable of receiving a *file lock indicator* from a primary server and storing said file lock indicator in the data storage unit; and  
file lock conveyance unit capable of conveying the *file lock indicator* from the data storage unit to an adoptive server when the primary server is unavailable.

For similar reasons presented above in association with claim 1, Applicants respectfully submit that *Miloushev* fails to disclose at least the above-emphasized features, and respectfully request that the rejection to independent claim 11 be withdrawn.

Because independent claim 11 is allowable over *Miloushev*, dependent claims 12-20 are allowable as a matter of law.

#### Independent Claim 21

Claim 21 recites (with emphasis added):

21. A file lock migration system comprising:  
processor capable of executing instructions; and  
file migration instruction sequence, that when executed by the processor,  
minimally causes the processor to:  
receive a *file lock indicator* from a primary server;  
record the *file lock indicator* in a first predetermined data-store; and  
convey the *file lock indicator* to a second predetermined data-store  
when the primary server is unavailable.

For similar reasons presented above in association with claim 1, Applicants respectfully submit that *Miloushev* fails to disclose at least the above-emphasized features, and respectfully request that the rejection to independent claim 21 be withdrawn.

Because independent claim 21 is allowable over *Miloushev*, dependent claims 22-30 are allowable as a matter of law.

#### Independent Claim 31

Claim 31 recites (with emphasis added):

31. A computer-readable storage medium having computer-executable functions for migrating file locks from one server to another comprising:  
file migration instruction sequence, that when executed by a processor,  
minimally causes the processor to:  
receive a *file lock indicator* from a primary server;  
record the *file lock indicator* in a first predetermined data-store; and  
convey the *file lock indicator* to a second predetermined data-store  
when the primary server is unavailable.

For similar reasons presented above in association with claim 1, Applicants respectfully submit that *Miloushev* fails to disclose at least the above-emphasized features, and respectfully request that the rejection to independent claim 31 be withdrawn.

Because independent claim 31 is allowable over *Miloushev*, dependent claims 32-40 are allowable as a matter of law.

#### **Independent Claim 41**

Claim 41 recites (with emphasis added):

41. An apparatus for migrating file locks from one server to another comprising:  
means for receiving a *file lock indicator* from a primary server;  
means for recording the *file lock indicator*; and  
means for conveying the *file lock indicator* to an adoptive server when the  
primary server is unavailable.

For similar reasons presented above in association with claim 1, Applicants respectfully submit that *Miloushev* fails to disclose at least the above-emphasized features, and respectfully request that the rejection to independent claim 41 be withdrawn.

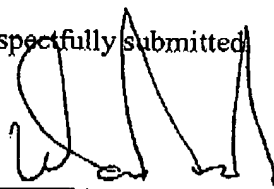
Because independent claim 41 is allowable over *Miloushev*, dependent claims 42-48 are allowable as a matter of law.

Due to the shortcomings of the *Miloushev* reference described in the foregoing, Applicants respectfully assert that *Miloushev* does not anticipate Applicants' claims. Therefore, Applicants respectfully request that the rejection of these claims be withdrawn.

CONCLUSION

Applicants respectfully submits that Applicants' pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, and similarly interpreted statements, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted



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